IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 3136 OF 2004

Vasanji Pasvir Nagada ... Petitioner
vs
Pitambar Girdhar Nehate & ors .. Respondents
Ms. Gauri Godse for Petitioner
Mr.P.R.Arjunwadkar for Respondent

CORAM : D.G.KARNIK, J
DATE: 29TH JULY, 2004.

P.C.

1. Heard learned counsel for the parties.

2. In the trial Court, the defence of the petitioner was struck of for non payment of the amount of rent due. Thereafter, the suit proceeded ex parte. The ex parte judgment was challenged in the District Court. The appellate Court has dismissed the appeal. Learned counsel for the petitioner contends that even after the defence is struck of, the petitioner had the right to cross-examine the plaintiff which has not been allowed and therefore the judgments below are erroneous. In Modula India Ltd vs Kamaksha Singh Deo reported in AIR 1989 SUPREME COURT 162, the Suupreme Court has held that even after the defence is struck of, the defendant is entitled to appear and cross-examine the plaintiff and show that on the evidence of the plaintiff he is not entitled to a decree for possession. It cannot therefore be disputed that the petitioner had a right to cross-examine the respondent. However, the petitioner never availed of that opportunity. A perusal of the roznama shows that after the defence was struck of, the defendant was absent throughout. Therefore this is not a case in which the petitioner wanted to cross-examine but was denied the opportunity to cross-examine the respondent. Hence, on merits nothing is shown that the judgment of the Courts below is erroneous.

3. In the circumstances, Writ Petition deserves to be rejected. Learned counsel for the petitioner requests sometime for vacating the premises. Learned counsel for the respondent has no objection for granting a reasonable time for vacating the premises. Taking an over all view of the matter, the petitioner is granted one year's time for vacating the suit premises subject to :

(i) that the petitioner paying all the arrears of rent up to date within four weeks hereof and continuing to pay the future rent/compensation equivalent to rent regularly every month till the date by handing over of possession. The amount if any already paid or deposited in Court shall be adjusted towards the arrears.

(ii) petitioner filing an undertaking in Court within a period of four weeks in the usual form.

4. Petition is rejected with aforesaid directions.